

FPPC REGULATION AND PROJECT CALENDAR FOR CALENDAR YEAR 2004

I. PROPOSITION 34 RETROSPECTIVE – PROPOSED REGULATORY REFINEMENTS.

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1. § 85310: Communications Identifying State Candidates – Issue Advertisements: Does section 85310 operate to effect a \$25,000 limit on expenditures by a candidate's own ballot measure committee for advertisements which feature the candidate?	ER Adopt			Perm Adopt								
2. § 85316, Regulation 18531.6: Post Election Fundraising: Does the Commission wish to reconsider reg 18531.6, which allows officeholders with pre- Prop 34 committees to raise funds into those old committees in excess of Prop 34 limits?	ER Adopt			Perm Adopt								
3. Termination of Committees: Regs 18404-18404.1: Should committees be permitted to reopen after termination? What rules apply to withdrawn candidates? Is the regulation necessary if the Commission changes reg 18531.6?		Pre- Notice		Adopt								

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<p>4. Recall Elections: Should candidates running in a state election be able to control ballot measure committees without limits? Reg 18531.5 provides that a state candidate controlling a recall committee is not subject to contribution limits. This raised many questions during the recent state recall election. One principal issue is whether this rationale applies to candidates who control ballot measure committees generally. The staff would explore this in light of constitutional implications and may recommend amendment of regulation 18531.5 or a new regulation addressing this and related issues.</p>						Pre-Notice		Adopt				

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5. § 85307 - Extensions of Credit: Formerly Proposed Reg 18530.7; Reg 18530.8: Personal Loans: Should the Commission reconsider adoption of a regulation addressing extensions of credit? Should the Commission define what “terms available to the public” means?								Pre-Notice		Adopt		
6. § 85304 – Legal Defense Funds: Section 85304 permits candidates to accept contributions in excess of the limits for purposes of paying costs incurred for the “candidate’s or officer’s legal defense.” May a candidate open a legal defense fund to cover costs in a lawsuit filed by that candidate against another candidate?									Pre-Notice		Adopt	

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<p>7. § 85306 – Attribution: Section 85306 permits candidates to transfer funds from one committee to another. Those transfers, however, must be attributed to specific contributors. For example, a \$3,000 transfer from committee A to committee B must be attributed in B as coming from a specific contributor to A. That individual is now considered to have contributed \$3,000 to B. Can he now make <i>another</i> contribution to committee A?</p>					Pre-Notice			Adopt				
<p>8. § 85317 – Carryover: Is a candidate required to be listed on the ballot in an election in order to take advantage of the carryover provision allowing unattributed transfer of campaign funds among a candidate's committees for the same office?</p>					Pre-Notice			Adopt				

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<p>9. § 85318 – Contributions for Primary and General Elections: Are separate committees required for the primary and general elections? Section 85318 allows candidates to have separate bank accounts for primary and general elections. Confusion exists about whether a candidate must (or may) form separate committees and what rules apply . For example, may the primary account be used to raise money for the general election?</p>						Pre-Notice			Adopt			
<p>10. § 85301 – Contribution Limits: Section 85301 establishes contribution limits in state elections but exempts a candidate's contributions from personal funds to his or her own committee. Staff proposes a clarifying reg describing what is "personal funds" – e.g., funds belonging to a sole proprietorship or wholly owned corporation.</p>									Pre-Notice		Adopt	

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11. § 85701. Disgorgement: Enforcement also proposes that the Commission adopt a regulation implementing the disgorgement requirements of section 85701.		Pre- notice		Adopt								
12. Affiliated Entities (18428): Discusses reporting by “affiliated entities.” May be further amended to clarify application of the aggregation provisions to local candidates and committees, add a definition of “affiliated entities” or codify other advice in the area.							IP Meeting		Pre- Notice		Adopt	
13. Reg. 18570: Return of Contributions with Insufficient Donor Information. Staff proposes an amendment to reg. 18570 to establish a timeline and process for turning money over to the General Fund in cases where a contribution is refunded and the contributor fails to cash the refund check.						Pre- Notice		Adopt				

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14. Lobbyist Contributions. § 85702 prohibits contributions <u>by</u> a lobbyist to elected state officers or candidates for such offices, if the lobbyist is registered to lobby the agency of the officer. This project explores whether a specific regulation is necessary to define when the statute is violated as a result of the <u>acceptance</u> of a contribution.		Pre-Notice		Adopt								

II. OTHER CAMPAIGN PROJECTS.

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1. Reporting and Recordkeeping for Electronic Payments. The statutes and regulations governing the reporting of contributions and expenditures are silent regarding payments that are made by electronic means. Enforcement proposes amending regs 18401 and 18421.1 by codifying the rules regarding the reporting and recordkeeping requirements of electronic payments.						Pre-Notice		Adopt				
2. Treasurer Duty: Reasonable Diligence. Reg. 18427(a) provides that a committee treasurer has a duty to use all reasonable diligence in the preparation of campaign statements. However, the reg. lacks any corresponding duty concerning the filing of the statements. Enforcement staff proposes that Reg. 18427(a) be amended to add the words "and filing" after the word "preparation" in that subdivision.										Pre-Notice		Adopt

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3. Aggregation under § 84308: § 84308 disqualifies any “officer” of a public agency, who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. The statute provides that when a closed corporation is a party (or participant), the majority shareholder of the corporation is also a party (or participant). This project considers whether further clarification of this aggregation rule is necessary.							IP Meeting		Pre-Notice		Adopt	
4. Reg. 18425: Late Contribution Reports. Amend the regulation to allow estimated reports during the 90-day election cycle and to allow estimated reports of independent expenditures during the same period.											Adopt	

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5. Reg. 18116: Reg. 18116 provides that when reports are due on a Saturday, Sunday, or official holiday, the deadline is extended to the next working day. The weekend extension applies to the \$1,000 and \$5,000 reports (added by Prop 34), but does not apply to the traditional late contribution reports. Colleen McAndrews submitted letters suggesting that the weekend extension be applied to traditional LCRs. She suggested that weekend 24-hour reporting could be preserved for LCRs on the final weekend before the election, but that prior weekends could be excepted out.											Adopt	

III. CONFLICT OF INTEREST AND LOBBYING

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
<p>1. General Plan Cluster. This project now includes the following subprojects: -----</p> <p>(a) Public Generally: Staff will explore modification of the general rule and the development of a stand-alone regulation pertaining solely to General Plan decisions.</p> <p>(b) Direct/ Indirect: Staff will also examine how general plan issues can be addressed at Step Four (Assessment of Direct/Indirect Involvement) and Step Five (Identification of the Materiality Standard) of the conflict of interest analysis.</p> <p>(c) Foreseeability: Consideration of clarification of the “reasonably foreseeable” standard to deal with problems associated with general plan decisions.</p>			Pre-Notice		Adopt							
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<p>(d) Standard of Care: What is the “standard of care” required of a public official deciding whether he or she has a conflict of interest? To what extent, if any, should making that reasonable effort (or complying with that standard of care) shield the public official from after-the-fact second-guessing or prosecution?</p> <p>(e) Conforming Changes to 18700: Including adding segmentation, specifically addressing burden of proof/production issues, and related changes resulting from other substantive amendments made to the regulations.</p>			Pre-Notice		Adopt							
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<p>2. Gift Tickets Cluster. Two issues have arisen concerning the value of gifts for disclosure and disqualification provisions of the Act and the gift limit: -----</p> <p>(a) Invitation-Only Events: Advice was provided concerning an invitation-only party hosted by a private entity. The sponsor sent various officials free admission tickets that had no stated purchase price. Historically, the valuation of these passes has been a pro rata share of the total cost. This proposal would codify the valuation rule for these situations, including specifying which tangible and intangible benefits must be included (such as entertainment).</p>					IP Meeting					Pre-Notice		Adopt

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(b) Fundraising Events for a 501(c)(3): Reg. 18946.4(b) provides that a ticket or other admission privilege to a 501(c)(3)'s fundraising event has no value. Enforcement proposes that the Commission revisit reg. 18946.4 and consider amending it to narrow the exception for 501(c)(3) fundraising events to exclude tickets to events that are being commercially marketed, such as Rose Bowl tickets, and to set the value of this subset of fundraising tickets to the face of the tickets.					IP Meeting					Pre-Notice		Adopt
3. Govt. Code § 1090 Merger Project. The Commission previously decided to solicit public input in a study of the possible merger of conflict-of-interest laws that are not currently in the Act into the framework of the Act. Under consideration for merger are §§ 1090 et seq, Public Contracts Code §§ 10410 et seq., and the common law doctrine against conflicts of interests.	Policy Discuss		Discuss Leg, Proposal if Needed									

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4. Reg. 18703.1: Reg. 18703.1 defines an “economic interest” in a business entity. It provides that otherwise related business entities do not have to be reported. This sweeping statement can be read to swallow up the statutory requirement in section 87207(b) which requires disclosure of the pro-rata share of investments held by a business entity in which the official has a 10 percent or greater investment interest (even subsidiaries). A clarifying amendment may be necessary.		Adopt										

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5. § 87202 and § 87204: Assuming and Leaving Office Statements. Staff is recommending that the Commission adopt a regulation clarifying when an official has assumed or left office triggering the filing of statements of economic interest. Currently, Commission advice for statements of economic interests may be different than the interpretation used in the revolving door context. Staff is also asking the Commission to consider a regulation clarifying filing requirements for alternates and designees.								Pre-Notice		Adopt		

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6. The Govt Salary Exception. Decisions affecting govt salary generally do not result in a conflict of interest. Enforcement proposes an amendment that would prohibit the official's participation in decisions to appoint the official's immediate family member to a governmental position and decisions impacting the salary of the official/immediate family where the person is the only person in the job classification or position.												Adopt
7. Reg. 18616: The Act requires reporting of payments for or in connection with soliciting or urging other persons to lobby elective state officials, legislative officials, or agency officials (i.e., "grassroots lobbying"). This amendment will clarify that payments for or in connection with such lobbying of the PUC are not exempt from disclosure.		Adopt										

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<p>8. Guidelines and procedures for filing officers/officials. Guidelines to be considered include: (a) Initial notification requirements (time lines); (b) Required contacts or attempted contacts with each non-filer, and documentation requirements for those contacts; and (c) Authority to hold filing officers/officials accountable for failing to comply with notification requirements. <i>[Regulatory action contingent on passage of legislation.]</i></p>						IP if Needed or Discuss		Adoption if Needed				

IV. ADMINISTRATIVE, ENFORCEMENT, AND OTHER ISSUES

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1. Confidentiality of Enforcement Cases. Historically, it has been the policy of the Commission to keep confidential both the existence of and any information discovered in connection with an enforcement investigation until after the investigation has been concluded. Enforcement staff proposes the addition of a regulation, interpreting § 83115 that expressly provides for the confidentiality of investigations, describing the scope of that confidentiality, and any exceptions the Commission may wish to build into it. This regulation could take the form of an amendment to existing reg. 18362, governing "Access to Complaint Files."										Pre-Notice		Adopt

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2. Precedential Decisions in Enforcement Actions. § 11425.60 of the APA provides general authority to the Commission to designate decisions as precedential. Enforcement is proposing the Commission consider a regulation establishing a precedential decision system and setting forth various criteria for the Commission to consider in determining whether to designate a decision as precedential.										Pre-Notice		Adopt

V. OTHER MISCELLANEOUS ITEMS

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1. Annual Technical Clean-up (including AB 1678 § 87407 and reg. 18361). The Commission considers annually changes to Commission regulations that resulted from the staff's review for technical and other minor changes.									Adopt			

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2. Quarterly review of work plan and plan updates, including Proposition 34.			Work Plan Revision			Work Plan Revision			Work Plan Revision	2005 Reg. Calendar		2005 Reg. Calendar
3. Gift, Contribution, and Expenditure Limit Adjustments. New contribution and expenditure limits, and the gift limit of the Act took effect January 1, 2003 and will remain unchanged until December 31, 2004. Thus, the Commission will need to adjust these limits in 2004, effective January 1, 2005.												Adopt